

AMENDED IN ASSEMBLY APRIL 21, 2003

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1392

Introduced by Assembly Member Bermudez

February 21, 2003

An act to amend Section 2220.05 of the Business and Professions Code, relating to medical services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1392, as amended, Bermudez. Medical Board of California: prosecutorial and investigative resources.

Existing law, the Medical Practice Act, creates the Medical Board of California within the Department of Consumer Affairs. Under the act, the board is responsible through its Division of Medical Quality for the regulation of the practice of physicians and surgeons. The act requires the board to prioritize its investigative and prosecutorial resources of specified cases in a certain manner, and authorizes the board to prioritize cases that are not specified as long as those cases are given lower priority.

This bill would ~~add felony and misdemeanor criminal acts to the list of specified cases and would~~ authorize the board to determine that requests for expenditure of investigative or prosecutorial resources cannot be pursued without detriment to the investigation and prosecution of the specified cases. The bill would require the board to provide the requester with a written finding to that effect and to provide referral to another state or local agency with jurisdiction to act, if

appropriate. ~~This bill would exclude from its provisions cases alleging criminal violations of the law.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 2220.05 of the Business and Professions
2 Code is amended to read:
3 2220.05. (a) In order to ensure that its resources are
4 maximized for the protection of the public, the Medical Board of
5 California shall prioritize its investigative and prosecutorial
6 resources so that physicians and surgeons representing the greatest
7 threat of harm are identified and disciplined expeditiously. Cases
8 involving any of the following allegations shall be handled on a
9 priority basis, as follows, with the highest priority being given to
10 cases in the first paragraph:
11 (1) Gross negligence, incompetence, or repeated negligent acts
12 that involve death or serious bodily injury to one or more patients,
13 such that the physician and surgeon represents a danger to the
14 public.
15 (2) Drug or alcohol abuse by a physician and surgeon involving
16 death or serious bodily injury to a patient.
17 (3) Repeated acts of clearly excessive prescribing, furnishing,
18 or administering of controlled substances, or repeated acts of
19 prescribing, dispensing, or furnishing of controlled substances
20 without a good faith prior examination of the patient and medical
21 reason therefor. However, in no event shall a physician and
22 surgeon prescribing, furnishing, or administering controlled
23 substances for intractable pain consistent with lawful prescribing,
24 including, but not limited to, Sections 725, 2241.5, and 2241.6 of
25 this code and Sections 11159.2 and 124961 of the Health and
26 Safety Code, be prosecuted for excessive prescribing and prompt
27 review of the applicability of these provisions shall be made in any
28 complaint that may implicate these provisions.
29 (4) Sexual misconduct with one or more patients during a
30 course of treatment or an examination.
31 (5) Practicing medicine while under the influence of drugs or
32 alcohol.
33 ~~(6) Felony and misdemeanor criminal acts.~~

1 (b) (1) *The board may by regulation prioritize cases involving*
2 *an allegation of conduct that is not described in subdivision (a).*
3 *Those cases prioritized by regulation shall not be assigned a*
4 *priority equal to or higher than the priorities established in*
5 *subdivision (a).*

6 (2) To ensure that the resources of the board are available for
7 expenditure in a manner consistent with the protection of the
8 public specified in this section, the board may determine that
9 requests for expenditure of its investigative or prosecutorial
10 resources, for cases not listed in subdivision (a), cannot be pursued
11 without detriment to the purpose of this section.

12 ~~(2)~~
13 (3) If the board finds that a case cannot be pursued pursuant to
14 paragraph ~~(1)~~ (2), the board shall provide that finding in writing
15 to the requester and shall provide, if appropriate, referral to other
16 state or local agencies that may have jurisdiction to act.

17 ~~(3) This subdivision does not apply to requests that allege~~
18 ~~criminal violation of any statute.~~

19 (c) The Medical Board of California shall indicate in its annual
20 report mandated by Section 2312 the number of temporary
21 restraining orders, interim suspension orders, and disciplinary
22 actions that are taken in each priority category specified in
23 subdivisions (a) and (b).

